IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.Rev.Pet.No. 4340 of 2006()

CRA.352/2005 of SESSIONS COURT, MANJERI
CC.153/2001 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, PONNANI
(MC.49/05)

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REVN. PETITIONER: APPELLANT/COUNTER PETITIONERS 2 & 3:

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1. DASAN, S/O. KUMARAN
   UNIKATTUVALAPPIL, KADAVANADU AMSOM DESOM
   PONNANI.

2. KURIYANMAKANAKATH SIDDIQ
   S/O. BAVAKUTTY, UNIKATTUVALAPPIL
   KADAVANADU AMSOM, DESOM, PONNANI.

BY ADV. SRI.VINOD VALLIKAPPAN

RESPONDENTS: RESPONDENTS/COMPLAINANT/STATE:

STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J

Crl. R.P. No. 4340 of 2006

Dated this the 7th day of December, 2006

ORDER

The petitioners were the sureties to the accused in C.C. 153 of 2001 on the file of the court of the Munsiff Magistrate of Ponnani. They executed bonds for Rs.15,000/- each. The accused absconded. Notice was issued to the petitioners/sureties. The trial court forfeited the bonds and imposed a penalty of Rs.15,000/- each by the order dated 1st July 2005. The petitioners challenged that order in Crl.A.No.352 of 2005 on the file of the court of Session, Manjeri. The Sessions court reduced the penalty to Rs.5,000/- each. The appellate court held that the trial court did not exercise the discretion under Sub Section (3) of Section 446 of the Code of Criminal Procedure. Therefore, the appellate court considered the matter, exercised the discretion and reduced the penalty to Rs.5,000/-.

2. In this revision, the petitioners contended that the penalty imposed by the appellate court is excessive and that no proceedings having been initiated against the accused in the MC

proceedings, the order passed by the trial court is illegal.

3. The appellate court has shown maximum indulgence in the matter and exercised the discretion in favour of the petitioners. The discretion exercised under Section 446(3) should not be lightly interfered with in revision. It cannot be said that the penalty is excessive. The bond was forfeited and a penalty of Rs.15,000/- each was imposed by the trial court by order dated 1.7.2005. Before the trial court, in spite of opportunities having been granted to the petitioners, they could not produce the accused. The appellate court disposed of the appeal on 4th August, 2006. Even during the period in which the Crl.Appeal was pending, the presence of the accused could not be procured at the instance of the petitioners. In these circumstances, I am not inclined to hold that the penalty imposed by the court below is illegal or arbitrary.

4. As regards the contention that the accused should also be proceeded with in M.C. proceedings, I am of the view that the initiation of proceedings against the petitioners would not be vitiated if the accused also is not proceeded with in the MC proceedings. Section 446 Crl.P.C does not contain such a

requirement. The learned counsel for the petitioner could not say who is Muhammed Najeeb shown as 1st count petitioner in the trial court. This contention is not seen raised either in the trial court or in the lower appellate court.

In the result, there is no merit in the Crl.R.P. It is accordingly dismissed.

K.T.SANKARAN,
JUDGE

csl